



Alliance of Nuclear Worker Advocacy Groups

July 24, 2018

The Honorable Rick Perry,
Secretary,
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Subject: Curtailing access to the Defense Nuclear Facilities Safety Board

Dear Secretary Perry:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) read with deepening concern the July 22, 2018 ProPublica article, *Trump Administration Neuters Nuclear Safety Board*.

As stated in our February 17, 2003 press release, since its formation in 2003 the focus of ANWAG has been on the implementation of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), as reformed. However, our broader mission,

"...is to protect impacted nuclear workers and citizens by presenting a unified voice of our membership to ensure government accountability, public education and participation on nuclear industry and defense operations issues, including cleanup, community and worker health and safety, waste management, benefits protection for retired workers, environmental justice and whistleblower protection."

DOE Order O 140.1, *Interface with Defense Nuclear Facilities Safety Board*, was published on May 14, 2018. ANWAG is confused why the Department of Energy (DOE) wants to limit the Defense Nuclear Facilities Safety Board's (DNFSB's) access. DNFSB and the National Nuclear Security Administration (NNSA) have similar missions when it comes to protecting the public and the workers. However, it is our understanding that the DNFSB has routinely acted more independently thus making it possible for them to identify safety issues that may not be identified by the NNSA which is more closely tied to operators of the weapons facilities and the DOE. This independence is of paramount importance to the workers whose very lives depend on this beneficial interaction.

NNSA's Office of Safety, Infrastructure and operations states the,

*Enterprise Stewardship supports NNSA's mission by ensuring the safety, security, and reliability of the nation's Nuclear Security Enterprise. In addition, **the Office ensures that the workers, the environment and public are protected.*** (Emphasis added).

DNFSB's mission is

*...to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of the Department of Energy, **in providing adequate protection of public health and safety at such defense nuclear facilities.** (Emphasis added).*

Providing protection to the public and, therefore, to the workers is the common ground between DOE and DNFSB. ANWAG's perspective, from reading DNFSB's reports and recommendations, is that it does not appear that the DNFSB has acted in a way that would be considered adversarial to the DOE's activities. Instead our perspective is that DNFSB's intent has always been to assist and provide the best expert advice to DOE on a variety of issues. Our forefathers thoughtfully provided a system of checks and balances in our federal government. We should not do any less in the management of our nation's nuclear weapons complex. We should not tie the hands of these agencies.

It is ANWAG's opinion that the DOE's order will prevent both the DNFSB and the NNSA from fulfilling their individual and interactive missions that provides protection to the workers and to the public.

We also want to bring to your attention a possible breach of procedures. The DOE Order specifies five criteria where access to documents can be denied to the DNFSB. They are,

- (a) The person requesting the information has not been granted an appropriate security clearance or access authorization by the Secretary*
- (b) The person requesting the information does not need such access in connection with his/her duties.*
- (c) The request is for predecisional (sic) or otherwise privileged records, for example, attorney-client, attorney work product, procurement-sensitive, or deliberative process draft documents that have not been approved for release; or to participate in deliberative meetings or discussions supporting the development of predecisional (sic) or other process draft documents that have not been approved for release. NOTE: Such documents should be considered on a case-by-case basis.*
- (d) Release of the requested information would violate the Privacy Act (5 U.S.C. § 552a).*
- (e) The requested information does not have a reasonable relationship to the functions of the DNFSB as enumerated in the Atomic Energy Act, such as information that does not pertain to a Department of Energy defense nuclear facility, as defined in Section 318 of the Atomic Energy Act, as amended (42 U.S.C. § 2286g).*

However, the statute only allows 2 instances where access can be denied, <https://bit.ly/2A2BQQK>

§ 2286c

(b) Access to information.

The Secretary of Energy may deny access to information provided to the Board to any person

who—

(1) *has not been granted an appropriate security clearance or access authorization by the Secretary of Energy; or*

(2) *does not need such access in connection with the duties of such person.*

We are concerned that DOE may have overstepped its authority by adding three additional reasons why access can be denied to a DNFSB member. The proposed additions seem to add even more subjectivity making it even less clear who has access and what constitutes appropriate duties.

The Department of Labor (DOL) is the federal agency responsible for implementing EEO/PCA. The National Institute for Occupational Safety and Health is responsible for reconstructing radiation dose. Both agencies have an advisory board which have complied with the Privacy Act. In a brief review of the DNFSB's reports, ANWAG has not found any instances where an employee was identified or where classified information was leaked.

ANWAG respectfully requests that DOE Order O 140.1 be rescinded. The safety of the workers and the public is paramount and that will only occur if the DNFSB and their employees are allowed to continue to act independently and to have access to all documents they need to perform their stated mission.

Sincerely,



Terrie Barrie

For ANWAG members



Janet Michel
ANWAG Founding Member

Charles Saunders
Rocky Flats SEC petitioner

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